

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA

VS.

DAVID ANDREW DIEHL

§
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§
§

NO. A-10-CR-297 LY

MOTION FOR CONTINUANCE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW David Andrew Diehl, Defendant in the above entitled and numbered cause and files this his Motion for Continuance. Diehl would show the Court as follows:

I.

This cause is set for jury trial January 11, 2011.

II.

Undersigned counsel requests additional time to review recently received discovery and prepare for the jury trial in this case.

III.

A continuance of at least thirty (30) days for the jury trial is requested.

IV.

Undersigned counsel has spoken to Matt Devlin, Attorney for the United States regarding this motion. The United States does not oppose the continuance.

V.

To deny Defendant this continuance would be to deny his right to effective assistance of counsel under United States Constitution Sixth Amendment.

The time requested by this Motion is excludable under 18 U.S.C. §3161(h)(8)(A)(ii).

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully prays that this Motion for Continuance be granted.

Respectfully submitted,

/s/ Stephen M. Orr
STEPHEN M. ORR
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Texas Bar No. 15317000

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of December, 2010, a true and correct copy of the foregoing instrument was electronically filed with the Clerk of the Court, using the CM/ECF System which will transmit notification of such filing to all counsel of record.

Matt Devlin, AUSA
816 Congress Ave., Suite 1000
Austin, Texas 78701

/s/ Stephen M. Orr
STEPHEN M. ORR

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ORDER

Came on for consideration this day Defendant's Motion for Continuance filed December 29, 2010. Having considered the grounds for said Motion, the Court is of the opinion that Defendant should be given a continuance of the jury trial of January 11, 2011.

IT IS THEREFORE ORDERED that the jury trial is CONTINUED to _____ o'clock _____.m. on the _____ day of _____ 2011.

Pursuant to the Speedy Trial Act, 18 U.S.C. §3161(h)(8)(A), the Court finds that the ends of justice served by allowing the Defendant additional time in which to prepare for the trial outweighs the best interest of the public and the Defendant in a speedy trial. The Court's basis for said finding is that the failure to grant such a continuance in this case would unreasonably deny counsel for the Defendant the reasonable time necessary for effective preparation, taking into account the exercise of due diligence. See, 18 U.S.C. §3161(h)(8)(B)(iv). Thus, the Court finds that the time between the previous setting and the new date is excludable under the Speedy Trial Act, 18 U.S.C. §3161(h).

SIGNED AND ENTERED this _____ day of _____ 20____.

UNITED STATES DISTRICT JUDGE